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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/992,966	11/06/2001	Curtis A. Vock	397057	8991

7590 02/03/2003
Curtis A. Vock, Esq.
Lathrop & Gage L.C.
4845 Pearl East Circle
Suite 300
Boulder, CO 80301

EXAMINER

WACHSMAN, HAL D

ART UNIT	PAPER NUMBER
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2857

DATE MAILED: 02/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.



UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT	PAPER
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11

DATE MAILED:

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Commissioner of Patents and Trademarks

Hal D Wachsman
Primary Examiner
Art Unit: 2857

Office Action Summary

Application No.

09/992,966

Applicant(s)

VOCK ET AL.

Examiner

Hal D Wachsman

Art Unit

2857

-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 October 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 10-13, 15, 19 and 20 is/are rejected.
- 7) ☒ Claim(s) 4-9, 14, 16-18, 21 and 22 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 30 October 2002 is: a) ☒ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☒ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Art Unit: 2857

1. The request to correct the inventorship, filed 10-30-02, of this nonprovisional application under 37 CFR 1.48(a) is deficient because:

An oath or declaration by each actual inventor or inventors listing the entire inventive entity has not been submitted.

As indicated in MPEP 201.03, 37 C.F.R. 1.48(a)(3) (see part B. Oath or Declaration, page 200-7) an oath or declaration under 37 CFR 1.63 by each actual inventor must be presented. While each inventor need not execute the same oath or declaration, each oath or declaration executed by an inventor must contain a complete listing of all inventors so as to clearly indicate what each inventor believes to be the appropriate inventive entity. Where individual declarations are executed, they must be submitted as individual declarations rather than combined into one declaration. Each declaration sheet filed 10-30-02, with the request to correct inventorship does not contain a complete listing of all inventors. For example, one declaration sheet signed by inventor Dennis Darcy also identifies Andrew Bodkin and Charles Marshall as part of the inventive entity but leaves out inventors Curtis A. Vock and Peter Flentov. In addition, on the declaration sheet signed by Charles Marshall there is no date of execution.

2. Claims 1-22 are objected to under 37 C.F.R. 1.75(a) for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. Claim 1, line 5, cites "users" however "users" of what exactly are being referred to here? Claims 7 and 8, line 1, cite "the sensor" however the antecedent basis is "mobile sensor". Claim 15, line 6, cites "the sensor" however the antecedent basis is

Art Unit: 2857

"at least one sensor". This same type of problem also occurs in claim 17. In claim 22, line 2, it appears that the word "a" is missing between the words "of" and "ski". The examiner asks the applicant to better claim the limitations cited above. While the examiner understands the intentions of the applicant he feels confusion could be drawn from the limitations cited above. Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. *Landsman 4,822,042*
Claims 15, 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Landsman (4,822,042).

As per claim 15, Landsman (Abstract, col. 3 lines 47-55) discloses the integrating step. Landsman (Abstract, figure 3A) discloses the processing step. Landsman (Abstract, col. 3 lines 63-68) discloses the wirelessly transmitting step.

As per claim 19, Landsman (Abstract, col. 3 lines 47-55) discloses the features of each of these claims.

Art Unit: 2857

As per claim 20, Landsman (see at least abstract) discloses the feature of this claim.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 1, 2 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Busack (6,020,851) in view of Eriksson (4,089,057).

As per claim 1, Busack (see at least abstract) discloses the coupling, downloading and processing steps with the exception of clearly disclosing that the performance being compared is athletic performance. However, Eriksson (Abstract, col.

1 lines 8, 9, 13-15) teaches this excepted feature. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to apply the techniques of Eriksson to the invention of Busack as specified above because both references deal with monitoring racing competitions, the auto race in Busack and the slalom racing events in Eriksson.

As per claim 2, Busack (Abstract, col. 3 lines 24-32) discloses the feature of this claim.

As per claim 11, Busack (see at least abstract) discloses the feature of this claim.

7. Claims 3, 10, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Busack (6,020,851) in view of Eriksson (4,089,057) as applied to claim 1 above, and further in view of Purdy et al. (4,757,714).

As per claim 3, Purdy et al. (Abstract, col. 1 lines 45-59) teach the feature of this claim. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to apply the techniques of Purdy et al. to the inventions of Busack and Eriksson as specified above because Purdy et al. measures the speed of a skier and Eriksson monitors the speed of skiers in a ski competition.

As per claim 10, Eriksson (see at least abstract) teaches comparing the forward velocity of each of the persons and Purdy et al. (Abstract, col. 1 lines 45-59) teach the attaching of speed sensor to each person. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to apply the techniques of Purdy et al. to the inventions of Busack and Eriksson as specified above

because Purdy et al. measures the speed of a skier and Eriksson monitors the speed of skiers in a ski competition.

As per claims 12 and 13, Purdy et al. (see at least abstract) teach the features of each of these claims. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to apply the techniques of Purdy et al. to the inventions of Busack and Eriksson as specified above because then the sensor would be able to move with the person as well as not encumber the person in the sports competition.

8. Claims 4-9, 14, 16-18, 21 and 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims and subject to the appropriate correction of the 37 C.F.R. 1.75(a) objections noted above.

9. Applicant's arguments filed 10-30-02 have been fully considered but they are not persuasive with the claims that remain rejected above. With respect to the Landsman reference on pages 10-11 of the reply the Applicant points out that claim 19 further recites that the sensing unit is integrated into a body of the tennis racquet and that this is not taught by Landsman. However, if we turn to column 3, lines 47 to 55, of the Landsman reference we find that the sensors may be **attached to the frame**, that the sensors are connected by leads to the electronic circuit 16, which is of micro-circuit construction which may be **housed within handle 6** and that the leads connecting the sensors to the electronic circuit may be **embedded into frame 4**. The frame and handle of a tennis racquet are clearly parts of the body of a tennis racquet thus as shown

above, In *Landsman* the sensing unit can also be integrated into a body of a tennis racquet. With respect to the *Busack* reference, the Examiner printed off another copy of the *Busack* reference but that copy too did not have a Figure 2. However, with respect to the arguments concerning this reference the Examiner notes that claim 1 of the instant application cites "coupling a mobile sensor with each of the persons". Then, claim 11 further limits this by stating "...the step of coupling comprising attaching the mobile sensor to a vehicle ridden on by each of the persons". It is clear to see that in the *Busack* reference there are race cars (see at least abstract) each ridden on by at least one person and each having a data acquisition member (i.e. mobile sensor – see col. 4 lines 29-34) the data acquisition member attached to the vehicle. The Applicant argues that *Busack* does not describe athletic performances of a person however it was the *Ericksson* reference and not the *Busack* reference which was used to teach the athletic performance aspect. The Examiner notes that on page 12 the Applicant appears to be arguing the *Ericksson* and *Busack* references individually. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). On page 12 of the reply the Applicant argues that "The only data *Busack* describes are vehicle parameters such as engine temperature and oil pressure..." however as explicitly shown in the abstract of *Busack* vehicle speed also is being measured and in *Eriksson* the skier's speed is being measured. With respect to the arguments concerning *Purdy et al.* on page 13 of the

reply the Examiner notes the following from MPEP 2143.01 "There are three possible sources for a motivation to combine references: the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art. In re Rouffet, 149 F.3d 1350, 1357, 47 USPQ 2d 1453, 1457-58 (Fed. Cir. 1998)". All three references, Busack, Eriksson and Purdy et al., are measuring the speed of a vehicle and both Eriksson and Purdy et al. are specifically concerned with the measurement of a skier's speed and all the references are dealing with sportsmen and/or sports competitions. Thus, there is indeed strong motivation to combine these references under 35 U.S.C. 103.

10. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hal D Wachsman whose telephone number is 703-305-

Art Unit: 2857

9788. The examiner can normally be reached on Monday to Friday 7:00 A.M. to 4:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc Hoff can be reached on 703-308-1677. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7722 for regular communications and 703-308-7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.


Hal D Wachsman
Primary Examiner
Art Unit 2857

HW
January 29, 2003